

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

Charles Newman Vandross,	)	Case No. 8:21-cv-01490-DCC
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
	)	
	)	
Warden Charles Williams, Deputy	)	
Warden John Palmer, Captain Daniel	)	
Harouff, Captain Debra Wilson,	)	
Mailroom Clerk Tamara Conwell,	)	
	)	
Defendants.	)	
_____	)	

This matter is before the Court upon Plaintiff's pro se filing, which has been construed as an action filed pursuant to 42 U.S.C. § 1983. ECF Nos. 1, 1-3. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pre-trial proceedings and a Report and Recommendation ("Report"). On July 26, 2021, the Magistrate Judge issued a Report recommending that this action be summarily dismissed. ECF No. 22. On August 13, 2021, Plaintiff filed a document docketed as objections to the Report. ECF No. 24.

**APPLICABLE LAW AND ANALYSIS**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The

Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

The Court will begin with a brief procedural history. In Plaintiff’s first filing in this action, he indicated that he was seeking a temporary restraining order (“TRO”) and/or preliminary injunction. ECF No. 1. By orders dated May 21, and June 17, 2021, the Magistrate Judge directed Plaintiff to complete a standard complaint form and otherwise bring this action into proper form. ECF Nos. 5, 12. Plaintiff complied and the case is now in substantially proper form.

The Magistrate Judge initially found that Plaintiff intended to proceed only as to his claims for injunctive relief. ECF No. 22 at 6. Accordingly, she concluded that this action was subject to dismissal as Plaintiff is not permitted to proceed with his request for injunctive relief without filing a lawsuit concerning the underlying claims. *Id.* at 6–7 (citing *Liberty Mut. Grp., Inc. v. Wright*, C/A No. 12-cv-00282, 2012 WL 718857, at \*3 (D.Md. Mar 5, 2012)). In his objections, Plaintiff clarifies that he did intend to file a complaint in addition to his request for injunctive relief. ECF No. 24 at 1. He further states that,

because his relevant deadlines have passed, he “does not objection dismissal without prejudice.” *Id.* at 2. However, out of an abundance of caution for a pro se Plaintiff, the Court has conducted a de novo review of the record, the First Report, and the applicable law. Upon such review, the Court agrees with the recommendation of the Magistrate Judge.<sup>1</sup>

### **CONCLUSION**

Upon de novo review of the record, the Report, and the applicable law, and Plaintiff’s statement that he consents to dismissal, the Court agrees with the recommendation of the Magistrate Judge. Accordingly, this action is **DISMISSED** without prejudice and without issuance of service of process.<sup>2</sup>

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.  
United States District Judge

October 12, 2021  
Spartanburg, South Carolina

### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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<sup>1</sup> As stated above, Plaintiff clarified that he was not merely requesting injunctive relief. Accordingly, the portions of the Magistrate Judge's Report discussing Plaintiff's ability to proceed in this action without an underlying complaint are found as moot.

<sup>2</sup> The dismissal is without prejudice to allow Plaintiff to exhaust his administrative remedies.